IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 23340 of 2007(C)

PETITIONER:

V.S.INDU, AGED 25,D/O.K.VIKRAMAN NAIR,
UPPER PRIMARY SCHOOL ASSISTANT (RELIEVED)
MUSLIM HIGH SCHOOL FOR BOYS, KANIAPURAM
(RESIDING AT KRISHNA SREE, KOCHALLUR,
P.O.MEDICAL COLLEGE, THIRUVANANTHAPURAM).

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:
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1. **THE STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT EDUCATIONAL OFFICER, THIRUVANANTHAPURAM.**

3. **THE MANAGER, MUSLIM HIGH SCHOOL FOR BOYS AND GIRLS, KANIAPURAM, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.A.J. VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007 ALONG WITH WPC NO. 7947 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

A.K.BASHEER, J.

W.P.(C)No.23340 & 7947 OF 2007

Dated this the 8th day of August, 2007

JUDGMENT

W.P.(C)No.7947 OF 2007

Having heard learned counsel for the parties and having perused the materials on record, I am satisfied that a detailed consideration of the rival contentions of the parties is not warranted, since the inter se dispute is admittedly pending before the Civil Court. It is brought to my notice that pleadings are complete in the said suit and it is posted for framing issues. But still a very brief reference to one or two aspects of the issue is necessary for the purpose of giving certain directions to the Civil Court.

2. Late Ahmed Pillai, who passed away years ago, had founded the institution in question. He was survived by four sons namely, Pookunju, Ibrahim Kunju, Alikunju and Jamaludeenkunju. It appears that the four sons had been functioning as manager of the institution after the death of their father, the last of whom viz. Jamaludeenkunju passed

away on February 18, 2006. It is on record that during the life time of Jamaludeenkunju, there arose some semblance of dispute with regard to his competency to continue as manager. Anyhow, I refrain from going into that area of controversy, in view of the order that I propose to pass in this writ petition. Suffice it to say that immediately after the death of Jamaludeenkunju, a suit was instituted by the petitioner and some others as O.S.90/06 before the Subordinate Judge's Court, Attingal praying for a decree to frame a scheme for the administration of the school. The said suit is still pending, to which reference has been made by me earlier. Ext.R4(b) is stated to be the copy of the plaint in that suit. It appears that in the meanwhile, respondent no.4 had raised claim for right of managership. Petitioner had also come forward with such a claim. Both applications were considered by the District Educational Officer, Thiruvananthapuram (respondent no.3) as directed by this court. The officer in Ext.P1 order found that the petitioner

was entitled to perform the duties as manager of the educational agency subject to certain conditions which were enumerated in the said order.

3. The above order was challenged by respondent no.4 before this court in W.P.No.17513/06. Simultaneously, respondent no.4 had challenged the said order before respondent no.2, the Director of Public Instruction also. By Ext.P2 judgment, this court directed respondent no.2 to take a decision on the appeal preferred by respondent no.4. It was further ordered that till such time, respondent no.2 passed an order in the case, status quo as on the date of judgment be maintained and no appointments in any of the schools in the management quota, by either side, be made. Consequent on the above direction, Additional Director of Public Instruction passed Ext.P3 order, which was challenged by the petitioner in revision before respondent no.1. The Government after considering the revision passed Ext.P11 order. The Director and the Government concurrently found that respondent no.4

was entitled to discharge the functions of the manager.

4. In this context, it may also be noticed that the Government had also considered the revision petition pursuant to a direction issued by this court in W.P.(C) No.28333/06 preferred by the petitioner herein. In Ext.P10, judgment arising from that writ petition, this court while directing the Government to consider the revision petition had directed that respondent no.4 would continue to discharge the duties of manager, if he had been allowed to continue as such, pursuant to Ext.P3 referred to earlier. However, it was further made clear that respondent no.4 shall not make any appointment of teaching and non-teaching staff in the three schools, and till such time, orders were passed by the Government in the revision petition, approval of appointment, if any, made in the meanwhile, shall be subject to the result of the revision petition.

5. As mentioned earlier the Government passed Ext.P11 order thereafter. Only prayer in this writ petition is to issue a

writ of certiorari to quash Exts.P3 and P11 orders of the Director and the Government respectively.

6. I have heard learned counsel for the parties and perused the materials placed on record. As noticed already, the issue relating to the right of management is pending consideration before the Subordinate Judge's Court, Attingal in O.S.90/06. Documents like Will, Partition deed, etc. copies of which are available in this proceeding have been admittedly produced before the Civil Court. Pleadings in the suit are reportedly complete. What remains is only framing of issues and trial. In my view, the nature of the dispute between the parties being such, it will be only appropriate that the Civil Court decides the issue once and for all.

7. However, in the peculiar facts and circumstances, it has to be directed that the Civil Court shall ignore the observations or findings entered by the Director or the Government in Exts.P3 and P11. In other words, the court below shall dispose of the suit untrammelled and

uninfluenced by any of the observations or the so called findings in Exts.P3 and P11.

8. The court below shall advance the hearing of the case and post the suit for trial immediately after the Onam vacation. The trial shall be taken up on a day today basis. The submission made by learned counsel for the petitioner and respondent no.4 that their parties will whole heartedly co-operate with the court for expeditious disposal of the suit is recorded. Unnecessary adjournments shall not be given by the court. It shall be ensured that the suit is disposed on or before October 6, 2007.

9. Interim order which is now in force shall continue till the disposal of the suit. However, it will be open to the parties to seek appropriate directions if the situation so warrants, in which event the Court shall pass necessary orders in accordance with law. It is made clear that it will be open to respondent no.4 to fill up the vacant post of teachers in the schools, if there are rightful Rule 51(A) claimants, in

terms of the order of staff fixation. But any such appointment shall be subject to the result of the original suit and it shall be made after obtaining permission from the court.

W.P.(C)No.23340/07

10. Petitioner in this writ petition claims that she is a Rule 51(A) claimant and that she had been appointed in the school as UPSA for the period from October 20, 2004 till December 20, 2004 and yet again from November 23, 2004 till March 31, 2005 by the then Manager. However, approval for the above two spells of appointment was declined in the light of the order of the Government in G.O.(P) No.169/04/G.Edn. dated 15.6.2004.

11. As rightly pointed out by the learned counsel, the amendment to Rule 7(a) 3 of Chapter XIV-A KER had been introduced subsequent to the above date of appointment. The said issue was considered by this court in Ext.P1 judgment . Thereafter, the appointment was approved by the officer as could be seen from Ext.P2. Learned counsel submits that a

vacancy is now available in the school to accommodate the petitioner. But the manager is not able to make appointment in view of the interim order issued by this court in W.P.(C) No.7947/07.

12. The above writ petition has now been disposed of by me. In the above facts and circumstances, I am satisfied that it will be open to respondent no.3 - manager to appoint the petitioner, if she is a rightful Rule 51(A) claimant and if there is a vacancy. On such appointment being made, the Controlling Officer shall approve the same, if there is no other legal impediment.

Writ petitions are disposed of in the above terms.

A.K.BASHEER, JUDGE

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